

ESTATE OF REBECCA (WAHBMEME) PIGEON OR
REBECCA WHITE PIGEON OR
AHN WAHN KE

IBIA 75-47

Decided October 30, 1975

Petition to reopen.

Granted and remanded.

1. Indian Probate: Reopening: Generally

Although the Superintendent of an Indian Agency has no interest in the outcome, he is a proper official of the Bureau of Indian Affairs to file a petition for reopening, under the authority of 43 CFR 4.242.

2. Indian Probate: Reopening: Waiver of Time Limitation

An Administrative Law Judge is without power to reopen a case after the passage of 3 years from the date the Judge enters the order, but the Secretary is not bound by the limitations of 43 CFR 4.242 and he has authority at any time to review on proper grounds.

APPEARANCES: Jack Carson, Superintendent, Horton Agency, Bureau of Indian Affairs, Horton, Kansas, Petitioner, pro se.

OPINION BY ADMINISTRATIVE JUDGE WILSON

The above-entitled matter comes before this Board on a petition to reopen, copy whereof is attached, dated January 31, 1975, filed by Jack Carson, Superintendent, Horton Agency, hereinafter referred to as Petitioner.

[1] The Superintendent as Petitioner, although having no interest in the outcome of the petition herein, is a proper official of the Bureau of Indian Affairs to file a petition under the authority of 43 CFR 4.242. Estate of John Mahkuk, 3 IBIA 291, March 20, 1975.

[2] More than 3 years having elapsed since the order approving will and decree of distribution was entered in the estate herein, the Administrative Law Judge properly referred the petition to this Board for appropriate action pursuant to 43 CFR 4.242(h). Id.

The Superintendent as basis for the petition gives the following reasons:

(1) That Michael Allen Webster, now deceased, and Mary Katherine Webster were ineligible to take under the testatrix's will of March 26, 1969, the land situated in Kansas since they were neither heirs at law nor enrolled members of the Prairie Band Potawatomi Tribe of Kansas as required by the Act of June 18, 1934 (25 U.S.C. § 464).

(2) That the interests devised to Michael Allen Webster and Mary Katherine Webster under the testatrix's will of March 26, 1969, lapses and passes by intestate succession, for the reason that they were ineligible to take the land in the State of Kansas.

For the foregoing reasons, the Superintendent prays that the 3-year limitation for reopening be waived pursuant to 43 CFR 4.242(h) and that the case be remanded to the Administrative Law Judge for hearing to determine if the order of April 15, 1971, should be modified to eliminate the shares of Michael Allen Webster and Mary Katherine Webster therefrom, and to determine the successors thereto.

The Administrative Law Judge in referring the matter to this Board recommends that the petition be granted and the case remanded for the purposes set forth in the Superintendent's prayer.

Good and sufficient cause appearing the Superintendent's petition should be granted.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the time limitation set forth in 43 CFR 4.242 is hereby WAIVED and the Superintendent's petition to reopen is hereby GRANTED and

the matter is hereby REMANDED to the Administrative Law Judge for conducting such proceedings he deems appropriate in the matter and for the issuance of an order or decision accordingly.

Done at Arlington, Virginia.

Alexander H. Wilson
Administrative Judge

I concur:

Mitchell J. Sabagh
Administrative Judge

Attachment

Re: Estate of Rebecca (Wahbmeme) Pigeon,
or Rebecca White Pigeon, or Anh wahn ke;
deceased Potawatomi Allottee No. 308

Probate No. A-85-71

State of Kansas)
) ss.
County of Brown)

Jack Carson, being first duly sworn, deposes and says: that he has
read the within and foregoing petition, and that the allegations and statements contained therein are
true and correct to the best of his knowledge and information.

/s/

Subscribed and sworn to before me this 31st day of January 1975.

Notary Public

My commission expires: 10-17-76
